

## **EXECUTIVE COMMITTEE MEETING**

**(DAY 1)**

**DECEMBER 10, 1996, 10 a.m. - 5 p.m.**

**NORTHWEST POWER PLANNING COUNCIL OFFICES**

**PORTLAND, OREGON**

### **I. Introductions and Review of Agenda.**

William Stelle, National Marine Fisheries Service regional administrator and Executive Committee chairman, thanked everyone for coming, led a round of introductions and reviewed the agenda for today's meeting. A copy of the September 20 EC agenda, together with a list of meeting participants, are attached as Enclosures A and B.

This is the final Executive Committee meeting of 1996, and it represents our collective attempt to try to improve regional decisionmaking on the implementation of a recovery effort for the hydrosystems in the Columbia and Snake Basins, said Stelle. There are a couple of major items to address at this two-day meeting. First, we need to review the 1996 fish migration season, identify the issues that arose and how or if they were resolved, to decide whether those issues warrant adjustments in procedures or substance as we head into the 1997 migration season, and to anticipate what other major decisions may be before us for the purpose of preparing for the next migration season. I want to reiterate our federal commitment to this forum as the proper forum within which all of the sovereigns in the basin can work toward consensus in implementing a recovery effort, Stelle said.

Stelle introduced Donna Silverberg of the Oregon Dispute Resolution Commission, the facilitator for today's EC meeting. Silverberg briefly described her background and function at today's meeting, saying she is here only to help keep the process moving forward constructively. I'm here at your pleasure, she said, so if, at any time, you feel that I'm not doing things in an impartial manner that allows for full discussion of the issues, please let me know, and we can bring in a different facilitator.

Donna Darm reviewed the agendas for today's and tomorrow's meetings. She added that yesterday she had received a letter from Reps. Elizabeth Furse and Mike Crapo regarding the region's management of the 1996 migration season; they requested that we place this letter on the Executive Committee agenda as a discussion item, Darm said. The letter includes their views on how we should proceed with our structure; some comments are procedural, while others are substantive. At the last Implementation Team meeting, the Oregon representative in particular objected to putting this letter on the EC's agenda; he felt it was inappropriate to ask the EC to review something that the IT had not first had an opportunity to digest. For that reason, the Crapo/Furse letter does not appear on the current EC agenda as a discussion item, Darm said. I wanted to point that out and advise the Executive Committee that the letter has now been received, and to ask the group whether they feel it should be added to the agenda at this time.

Just for reference, added Stelle, the letter is dated December 9, is addressed to Randy Hardy of the Bonneville Power Administration, General Robert H. Griffin of the Corps of Engineers, Katie McGinty, Chair of the Council on Environmental Quality, and myself, and is signed by Reps. Crapo and Furse. Darm distributed copies of the letter to the EC participants (Enclosure C).

I don't necessarily see a need to discuss the letter at this time; I suggest we simply call it an information item on the agenda, said Joyce Cohen of the Northwest Power Planning Council. I can't imagine anyone will be ready to discuss it if they haven't had a chance to read it. We'll put it on tomorrow's agenda as an information item, said Darm.

We also have notes from the last EC meeting -- any questions or comments? asked Darm. No comments were provided.

The following is a summary of the items discussed at the December Executive Committee meeting (not a verbatim transcript), together with actions taken on those items. (NOTE: some of the enclosures referenced in these notes may

be too lengthy to attach; copies of all enclosures are available upon request from Kathy Mott of NMFS at 503/230-5420).

## **II. Presentation on Alternative Dispute Resolution (ADR) Report.**

Mark Eames of the NOAA General Council staff provided an introduction to this topic, pointing out that there are two related items on the agenda for today: alternative dispute resolution and rules and procedures. When we began the ADR process, he said, we wanted to look at what techniques might be available to help parties get unstuck in when impasse is reached, and perhaps more importantly, what techniques might be available to help us avoid getting stuck in the first place.

Back in June, we presented a background paper prepared by a group of federal, state and tribal attorneys, who have been meeting for the past eight months, Eames continued. The paper covered the various alternative dispute resolution techniques -- the range of procedures available for getting unstuck. I would encourage you to continue to refer to that paper as good basic background information, he said.

Also in June, the federal agencies indicated their continued support for exploring the use of ADR, Eames said. To further that resolution, the federal agencies hired a consultant, RESOLVE, to do two things. The first was to provide an assessment of the feasibility of negotiating some sort of agreement covering dispute resolution in the Columbia River Basin. The second task was to supplement our staff to plan and pull together such an ADR agreement if the feasibility report suggested that that was a logical next step. Today, Suzanne Orenstein will present the results of the RESOLVE feasibility study.

Yesterday, the attorneys group met, along with a group of program managers, to start talking about the second step in this process -- how do we bring the principals together to discuss what sort of dispute resolution agreement might be appropriate, Eames continued. The group did not reach any final conclusions about how that might be done, because they need to talk to each of you separately; instead, we set a date for a conference call of that group: December 20. At that time, we'll be discussing exactly how to proceed and what sort of staff might be appropriate to plan for a meeting of the principals to begin negotiations on an ADR agreement.

With that, Eames yielded the floor to Suzanne Orenstein of RESOLVE. She distributed copies of the RESOLVE feasibility assessment report on ADR options for Columbia River Basin salmon recovery issues (Enc. D), and provided an overview of the background and methodology underlying the report.

One of my primary findings was that everybody in the basin is very interested in dispute resolution, but dispute resolution means a different thing to almost everybody, Orenstein began. It is not immediately obvious where the common ground may lie. Orenstein provided a brief overview of the existing decisionmaking bodies in the region, observing that the task of a dispute resolver is first, to look at such a structure with an eye to where dispute resolution methods could be introduced. By dispute resolution, she said, I mean facilitation, mediation, independent fact-finding or independent scientific advisory opinions, and perhaps non-binding arbitration.

In our legal society, said Orenstein, the eventual arbiter of what is consistent with the laws and what public policy is appropriate to carry out those laws is the court system. Generally, the place where alternative dispute resolution occurs is the space between the existing fora for addressing disputes, and the court system. So one of the main things I looked at, she said, was whether or not it would be possible to design a dispute resolution mechanism that could handle a broad range of disputes.

Orenstein continued on through the various visions her interviewees had of what such a dispute resolution mechanism might look like. Two main visions emerged: one, a mechanism that would focus on areas where impasse has occurred; the other a collaborative forum where the various sovereigns in the region could sit down and develop agreements that do not compromise the regulatory authorities of the various participants.

That said, Orenstein moved on to the three main recommendations outlined in the RESOLVE report:

- That the dispute resolution and dispute avoidance capacity of existing mechanisms be improved. One specific improvement mentioned by a number of participants regarding the NMFS forum is that everyone

who needs to be involved is engaged and committed to the process -- that it is as inclusive as possible, Orenstein said. A sub-recommendation here was that members and staff of the existing regional organizations should receive training in how to conduct a collaborative process.

- That all of the interests affected by dispute resolution in the region come together and begin to design a mechanism to address impasse. To do this, said Orenstein, you either have to tailor it to address the disputes coming out of one forum, or you have to develop broader principals that can overarch different fora, and that can be tailored more specifically to individual fora.
- That, given the high level of interest expressed by the interviewees for this report in joint decisionmaking as an avenue to implementable agreements, and the amount of effort involved in developing such a mechanism, it may be more appropriate to try it on one or two urgent issues, with the goal of developing a model process which can then be evaluated.

Stelle made several substantive comments. First, he said, from my perspective, this is a very important topic, and we've set aside a large block of time today to allow us to work through some of the issues connected with ADR. I also think Suzanne did an excellent job on this report, and was impressed by the degree to which it was right on the money, given the complexity of the players and issues involved, said Stelle.

On a more substantive front, he continued, I think it may be misleading, in looking at the lower-level existing fora, to align them at the same level -- they are not equivalent fora, doing the same thing or serving the same function. All of these fora have different roles and functions, and therefore are not equal to one another. Because of that, the challenge of trying to fashion an agreement on general principals of and for an ADR system that will apply across the board is a very ambitious undertaking, if it is possible at all. My instinct suggests that we be more specific, and target a particular undertaking or issue before one of those fora to which an ADR system could be applied. Perhaps we could go through the list of existing fora, and decide which would be the most appropriate setting for that effort, Stelle suggested.

Cohen suggested that there may be some basic elements applicable to all fora: first, that each of the fora should be facilitated and that each should have a well-defined mechanism for the resolution of technical issues. I agree with Will, however, that the place to start is with a current dispute in one of the existing fora, Cohen said. Certainly we're rich in opportunities, Stelle observed. So let's try to apply some of these techniques or principals, and if they work, we can transfer that information to other fora, suggested Cohen.

The group discussed some of the needs to be addressed in a workable ADR process. Ultimately, Orenstein wrote the following list on the board:

- Focus initially on current disputes
- Develop a tool box of techniques to apply issue by issue
- Create or designate an arena that includes all sovereigns
- Clarify where disputes are being addressed
- There is a need for an ecosystem forum
- Reduce the number of fora through coordination, integration and consolidation
- Focus on key issues and manage workload -- create some sort of "traffic cop" mechanism to direct issues to the appropriate forum.

We still don't have everyone we need to have at the table, commented Mike Field of Idaho -- the tribal sovereigns in particular are very thinly represented, and we need to make a greater effort to facilitate the participation of the full spectrum of regional entities.

Don't forget that the treaties are ultimately the law of the land, said Lionel Boyer of the Shoshone-Bannock Tribes. The federal agencies are required to implement those treaties. The tribes have to be a part of this process, but keep in mind that the tribes are very protective of what they have. Any agreement that is negotiated at a table like this one cannot abridge the treaties. You have 13 tribes on the Columbia River that you will have to consult with individually before any agreement can even be brought to the point of dispute resolution, he said, and any of those 13 tribes has the authority to take you into a court process.

Looking at the question of reducing the number of existing fora through coordination, integration etc., said Cohen, which umbrella would MOA activities fit under? I see that as a prime opportunity to consolidate some of these administrative elements. Would it fit under the Power Planning Council umbrella? I don't know, replied Ken Pedde of USBR. That's a group that cuts across the responsibilities of multiple agencies -- perhaps this is an instance where facilitation would help.

Field suggested that the issue of river governance, which the states, tribes and federal agencies have long struggled to resolve, might be another good subject for a trial ADR process. We need to recognize that any dispute resolution process requires a certain amount of give and take, he said; however, we also need to recognize that there are certain things the states, tribes and federal agencies will not give up when push comes to shove. As we develop this ADR mechanism, it's vital to have all the entities in the region engaged every step of the way, rather than creating something, then inviting the tribes, for example, to provide input after the fact -- that's just not going to work.

If there is consensus within the region that some sort of improved decisionmaking processes, including a more sophisticated and explicit ADR system, may be useful, it sounds to me like we need to do a trial run to find out *how* useful, said Stelle. The next question, as we've discussed, is which issue or issues would be appropriate to run through an ADR effort. He spent a few minutes describing the Lookingglass Hatchery dispute, successfully concluded in the fall of 1996 through the use of an independent scientific advisory panel; in my view, that is an excellent example of an ADR process that worked, for a specific dispute under the U.S. v Oregon umbrella, he said. In other words, we have already done a trial run that resulted in the successful conclusion of a difficult matter, said Stelle. I was somewhat surprised, frankly, to see in Suzanne's report that hatchery issues continue to be problematic for many of the entities in the region.

I think what Suzanne was hearing were questions about the overall role of hatcheries in regional salmon management, said Cohen -- that's a major, overarching debate that's been ongoing for some time. Do you think the mechanism used to resolve the Lookingglass Hatchery dispute could apply to this more global issue?

I think there are a couple of existing processes within which that broader issue is being debated, Stelle replied, including, but not limited to, the Council's amendment process. My instinct, with regard to the issue at hand, is that a targeted framing of an issue in a specific context is more amenable to resolution than a generic issue. As a tactical matter, my recommendation would be to be discrete about how we target the issue of hatcheries, work through the specific fora in which those discrete issues are addressed, and see whether, at the end of the day, something is emerging that is more generic.

Do the tribes have any input on the overall direction of the alternative dispute resolution discussion so far? asked Silverberg. One thing that bothers me a little is the word "manager," said Eugene Greene Sr. of the Confederated Tribes of Warm Springs. If the salmon were really being managed, we wouldn't be having these discussions about how we're going to save them in the future. I'm also struck by the fact that we're always talking about what we're doing in the short term -- immediately, said Greene. We don't talk about the long term, what happens in the future. Indian people have to plan far in advance to protect our interests -- the resource. I think once we're able to get away from a situation where everyone is looking after their own interests, and talk about what's best for the region wholistically, we'll have a better process, and the region will be better off.

I was struck by a couple of things at yesterday's attorneys' meeting, said Rob Lothrop of the Columbia Basin Inter-Tribal Fish Commission. One observation was that having the Executive Committee and the Implementation Team take charge of defining the rules of engagement on hydrosystem operations was awkward at best and unworkable at worst, because you don't have the necessary breadth of commitment, from all the sovereigns, to those bodies. If we are to avoid or efficiently resolve disputes over hydro operations, we have to set up a process that involves all the sovereigns in negotiations about how the system will be operated.

Boyer echoed his previous comment that any effective ADR process will have to include full tribal participation. From a tribal perspective, it would be better to resolve issues through constructive dialogue among all the relevant parties, rather than going directly to litigation. Again, he said, the treaties are the supreme law of the land, and laws that were established later do not supercede those treaties. However, I believe there is a middle ground that we can work to reach common consensus on many of the issues facing this region today.

Tim Hall of Montana said he would prefer to see dispute resolution move through the NMFS forum, simply because, at least from Montana's point of view, that's where the action is. We would like to see an ADR component added to the TMT/IT/SCT/EC fora, he said. From a practical standpoint, we're going to be headed into the 1997 migration season fairly soon, and we'd like to make as much progress as we can on dispute resolution within those existing fora. If other entities in the region are dissatisfied with the level of inclusivity in the NMFS forum, that can also be worked on if necessary.

Echoing one of Will's earlier comments, said Andre L'Heureux of Washington, I would be in favor of choosing one or two current issues and running them through a trial ADR process. That will inform us not only about the possibilities of alternative dispute resolution, but about some of the governance questions as well.

One other thing to add, said Boyer -- one forum that does recognize and encourage communication and participation among and by the tribes is the Columbia Basin Fish and Wildlife Authority. The tribes do not participate in a meaningful way in any of the other fora you're talking about here today.

Orenstein returned to the topic of yesterday's attorneys' meeting, where the subject of how the region can best move toward the development of an ADR process was discussed. Three basic options were put forward at the meeting, she said. The first option was to convene an executive-level meeting to discuss broad principals of dispute resolution across the region's existing fora. The second option was to focus on improving the NMFS fora, including the possibility of creating a new forum that is more inclusive and has commitment from all sovereigns to participate. The third option that was discussed was to focus on one or two specific issues, similar to what has been discussed at today's meeting.

We did a straw poll to see which option attracted the most interest from the meeting participants, Orenstein continued, and by a very wide margin -- 14 to 2 -- most people were interested in improving the NMFS forum. It would be helpful to get some feedback from this body about where you think we can most effectively invest our time and resources, she said.

Stelle reiterated his earlier suggestion that the EC choose an issue for an ADR trial run. What I recommended in my report, said Orenstein, was that you negotiate among yourselves what issue to take on, and that you have someone conduct a neutral assessment of who needs to be there and what the structure should be; this assessment would then be ratified by a negotiating group. That's standard practice, she said.

After a break for lunch, Silverberg directed the group's attention to the three options for advancing the ADR development process identified at yesterday's attorneys' meeting. What I'd like to do, she said, is to look at this list, see if you have any options to add to or subtract from the list, and to discuss which option to go forward with. I'd also like to talk about who should do this work, whether it should be this group or whether there are other individuals or entities that need to be involved in those discussions.

She read through the list:

- 1) Develop broad principals on dispute resolution, upon which all sovereigns in the region can agree, which would overarch all existing fora.
- 2) Improve the regional (NMFS) forum's inclusivity and capacity to resolve issues related to hydrosystem operations.
- 3) Focus on dispute resolution mechanisms for an issue, not for the forum as a whole.

To pick up on our discussions this morning, said Stelle, it seems to me that there is fairly broad agreement that more detailed operating guidelines for this process, including operating guidelines for the IT, the various committees

which the IT oversees, and the terms and conditions under which the IT functions and refers issues to the executive policy group, need to be further developed and nailed down. That was certainly one of the most important issues mentioned in the RESOLVE report. To me, that falls under Option 2 on the (above) list.

Rob Lothrop made the point this morning that, if the IT is going to undertake the guidelines development process, it needs to recognize that there are relevant sovereigns who are not necessarily active participants or endorsers of the IT or the Executive Committee, Stelle continued. Therefore, it will be necessary to engage in some active outreach to those other sovereigns. I raise this point primarily to ask the question of whether it will be possible to reach agreement that the IT will proceed along the path outlined in Option 2, and, if so, whether we can wind up today with an instruction to the Implementation Team to proceed.

Rather than asking the IT to undertake this activity, aren't we actually authorizing the IT to participate in something the attorneys' group is already engaged in? asked Lothrop. True, replied Stelle; the legal capabilities of that group might be useful in developing rules and procedures etc. My only thought is that the legal group, as currently constructed, doesn't really have senior program expertise; both program and legal expertise will be integral to this effort. We want to be sure that the people who are overseeing the substance of this program implementation are there to share ideas about what works.

What the Implementation Team is looking for is authorization from this group, since you direct the work of the IT, to continue to spend our time working on this issue in conjunction with the lawyers' group, said Donna Darm of NMFS. Does that capture your thought, Rob? asked Stelle. I think so, Lothrop replied.

OK, at this point, we're looking for authorization for the Implementation Team to participate with the already-extant attorneys' group, using teamwork between the policy folks and the legal folks, essentially, to come up with ideas to improve inclusivity and the capacity for resolving hydrosystem disputes in the NMFS forum, said Silverberg. I think it's broader than that, said Stelle -- it's rules and procedures governing implementation activities for hydro issues. It was also reiterated that tribal participation is critical to the development of an effective dispute resolution mechanism for the region, and the IT and attorneys' group need to work with CBFWA and other fora to encourage tribal participation in the process. After a few minutes of discussion, no objections were raised to the EC's authorizing the Implementation Team to continue to participate in this effort. And should we, by inference, direct them to look at Option 2? asked one meeting participant. Yes, was the reply.

Option 2, of course, does not preclude us from pursuing Option 3, observed Fred Olney of USFWS. Do we want to talk more about Option 3 at this point? asked Silverberg. Yes, said Stelle -- there are a number of issues on a variety of timelines that continue to be the subject of very active discussion in the region. It makes sense to me, he said, that if we are collectively interested in trying to improve the decisionmaking process in general, it might be useful to identify one or two issues which we could design a dispute resolution system around. Personally, I think there is a lot of opportunity to improve the way we do business, and I think we should seize on that opportunity.

Darm identified several potentially appropriate regional issues for such an ADR "trial run:"

- a) Transportation -- what percentage of the 1997 run should be transported, and what percentage should be left to migrate in-river?
- b) What should summer spill levels be?
- c) What sort of decision matrix should be used to make the 1999 drawdown decision?
- d) Should John Day be drawn down to minimum operating pool?
- e) What is the appropriate level of investment in the Lower Snake River dams leading up to the 1999 decision point?
- f) What are the appropriate dissolved gas standards?

I'm hearing a little confusion about what we're authorizing the IT to do in conjunction with the lawyers' group, said

Stelle. Let me be specific: are we contemplating that the lawyers' group, working with the Implementation Team, will develop the specific details of a generic dispute resolution system? Because what I thought we did was to authorize that group to develop a better, more explicit statement of roles and responsibilities, operating guidelines etc., Stelle said. That may include some aspects of dispute resolution, but would not include the design of the specifics of an ADR system.

The main reason we are here today, and the reason this forum exists, is to find a way to recover the runs of salmon that are fast being depleted, Boyer said. We've spent today talking about a process for making our technical and policy functions work better. In the meantime, time is running out. There are recovery measures for salmon that are on a fast track. The thing that concerns me, my tribe and other tribes in the region, is that that track may not be fast enough -- the MOA timeline says things will be done by the year 2000, and that may be too late. The process of identifying what we can do to recover the depleted stocks... our recommendation has been the removal of the four Lower Snake River dams, Boyer continued. Yet I understand that the Corps of Engineers has recently been authorized by NMFS to build more barges, to transport fish from the Lower Snake projects.

If, in the year 1999 or 2000, the decision is made to remove the Lower Snake dams, we won't need those barges, Boyer said. There are also a lot of capital improvements that are being put in place at the Lower Snake dams and John Day dam. I think that's the issue we should be talking about. The development of a process to tell us how we should talk about that issue is something we can put on a side-track, he said -- let's spend our time and energy on activities we know will help recover those depleted stocks.

So the issue, then, is the question of whether or not to spend any more money to fix the Lower Snake dams between now and the 1999 drawdown decision point? asked Stelle. Right -- why spend the money on them if there's a good chance those projects will be mothballed? said Boyer.

On a more fundamental level, why would you want to do a pilot ADR project? asked one meeting participant. Two reasons, replied Stelle. First, to resolve the issue itself. Second, to test whether an alternative technique for deciding disputed issues would be beneficial to the region.

Another participant suggested that the attorneys' group, working with the Implementation Team, develop the rules and procedures for the broader NMFS forum, including at least some elements of a dispute resolution system, then go ahead and identify an issue which they would then take through the dispute resolution process. That's the only way we're going to know whether or not the process is going to work for us, he said. And Lionel's suggestion is that the issue we run through that trial ADR process is that of spending on the Lower Snake projects, said Stelle.

After a few minutes of further discussion, no objections were raised to the idea that the EC would authorize the Implementation Team to work with the attorneys' group on the development of the broader rules and procedures, and to identify an issue to bring forward through a trial ADR process. I would also suggest that we attach a schedule to this exercise, said Stelle.

What I heard at yesterday's attorneys' meeting was that the goal is to have at least an interim ADR process developed by March, when the 1997 migration season will be upon us, said Tony Nigro of ODFW. That's not to say it's going to be carved in stone at that point -- we can continue to refine it over the following months. But if we can indeed have a process for not only resolving disputes, but avoiding them, in place by February or March, that would be a huge step forward.

Isn't it true that the main task before the attorney's group and IT is the development of rules and procedures for operating the NMFS fora? asked Field. That's not just ADR -- the ADR development process is sort of incidental to that broader task. And that in itself is a big task to accomplish between now and February, said Ken Pedde -- realistically, I think if you want to try to run a specific issue through a trial ADR process, it's going to have to be done by a group other than the attorneys'/IT committee.

So is it clear what we're asking the IT to work on in conjunction with the attorneys' group? asked Silverberg?

- 1) Improve rules and procedures and procedures for the regional forums, to increase participation and effectiveness
- 2) Develop acceptable dispute resolution procedures to enhance the capacity of the forums to avoid impasse and

resolve hydro issues

- 3) Identify a specific issue or issues to run through the dispute resolution process or processes developed by the attorneys/IT group
- 4) Encourage tribal participation through active outreach, involving CBFWA and other entities as necessary.

All of these interim work products are to be developed in time for presentation at the next Executive Committee meeting in February, Silverberg added. Does anyone disagree with that authorization at this point? After a few minutes of further discussion, no EC members objected to this direction to the IT.

### **III. Presentation on Draft Rules and Procedures Document.**

Darm distributed copies of the most recent draft Regional Organization (Executive Committee, Implementation Team and Technical Teams) Rules and Procedures document. As you'll recall, she said, two meetings ago, the Executive Committee asked the IT to develop draft rules and procedures for EC consideration. At the last EC meeting, we presented a list of issues arising from the rules and procedures development process; outstanding issues have been highlighted within the text with brackets.

Per our instructions, we haven't tried to resolve major policy issues, Darm continued. Instead, we've simply tried to frame them for eventual Executive Committee resolution. Also, she added, at our November 21 meeting, we received a letter from CRITFC's Implementation Team representative, saying that he was not planning to participate in the development of the rules and procedures because it was his view that the IT was not the appropriate body to draft this document. He expressed the view that a negotiating forum would be a more appropriate venue for these discussions, and included one or two additional conditions that needed to be met if he was to participate, including the continued jurisdiction of the federal district court over this entire process.

We also received a letter from an attorney representing the Yakima Indian Nation, expressing the Yakimas' view that it is not appropriate for the Implementation Team to undertake a review of the rules and procedures, Darm said. The Yakimas feel that discussion of policy issues should occur in a policy forum.

In the course of the discussion at yesterday's attorneys' meeting, she continued, it became apparent that the IT has been proceeding apace with the development of rules and procedures, and in the process, leaving others in the region behind. In particular, many in the region feel that we have failed to encourage full tribal participation in those discussions. I think the discussion we've just concluded on dispute resolution will help the IT to move forward with further development of the rules and procedures in a more constructive and inclusive way.

So you don't feel the IT needs any further direction from us? asked Cohen. Not at this time, said Darm -- I think your instructions are clear. I'd like to say that I see a real improvement in this rules and procedures document, from first to second to third draft, Cohen said, and I appreciate the effort the IT members have put into this. However, as I mentioned, there are still rules and procedures issues that are framed, but unresolved, said Darm -- membership, for instance.

Perhaps the attorneys' group, in consultation with their clients the sovereigns, could bring that membership issue to resolution, suggested Cohen. Good suggestion, said Darm. I should mention as well that we have not tackled the emergency procedures issue -- BPA's IT representative has drafted a strawman proposal, and we have asked the Technical Management Team to review it. We expect their analysis to be a part of the upcoming discussions on rules and procedures, she said. I think that's appropriate, said Cohen.

In response to a question from Field, Darm said the main membership question focuses on the character of the participation in the various fora by the hydropower operating agencies and by non-sovereigns who operate projects on the river, specifically the Mid-Columbia PUDs and Idaho Power Company. Some members of the IT feel that the operating agencies should not be allowed to vote on the IT and the Executive Committee -- that those should be fora where the others come to the operating agencies and make recommendations about how to operate the system. The current draft of the rules and procedures document contains three different possible wordings for the membership section; we'll refine those options further, but ultimately, the membership issue is going to be a policy call for this



group, Darm said.

#### **IV. Facilitated Discussion of Draft Rules and Procedures.**

No further discussion of the draft rules and procedures occurred at the meeting.

#### **V. Status of Multi-Year Implementation Plan (MYIP) Document and Emerging Issues.**

Ed Sheets provided some background on the development of the Multi-Year Implementation Plan, explaining that the project had been initiated last August, when the fish and wildlife managers and the Power Planning Council recognized the importance of understanding what is contained in the three major regional recovery plans currently on the table, of identifying areas of agreement within the plans so that those measures can move forward, and of targeting areas of disagreement for further discussion and resolution. In other words, said Sheets, there will be no shortage of issues for Executive Committee consideration in the coming months.

The final Multi-Year Implementation Plan will address anadromous fish, resident fish and wildlife, Sheets continued. The three main recovery plans addressed in the MYIP are the Power Planning Council's Fish and Wildlife Program, the NMFS Biological Opinions and draft Recovery Plan, and CRITFC's Spirit of the Salmon report. We have also identified a number of other state, tribal and federal recovery plans, in an effort to compile and collect all of the ongoing recovery efforts in one place, Sheets said.

As I say, we have attempted to identify areas of agreement, where the three plans are consistent, and to identify measures that can go forward without undue controversy, perhaps even on an accelerated schedule, Sheets continued. When we have identified differences between the plans, we have tried to clearly articulate those and place them within a timeline -- issues that need to be resolved in the next three, six or 12 months. Our intent is to provide a concise description of what the issue is, whether there has been an effort to date to try to resolve it and what the outcome of that process was, and, where possible, include a suggested approach for the region to resolve these issues. The plan will identify ongoing and new direct-funded work through the year 2001; it will also tie each individual project to the program measure, within one of the recovery plans, that provides its foundation.

In addition, said Sheets, we're trying to look at subregional habitat and production activities, as well as the budgetary implications of these future and ongoing activities. We're also trying to describe, from the fish and wildlife managers, a process to improve the annual workplan development process. We would like to provide the region a framework to clearly articulate the rationale for the projects that were selected, within the context of a longer-term view under the Multi-Year Implementation Plan.

Moving on to schedule, Sheets said the first draft of the MYIP document was completed in November; we're now in the process of reviewing and revising it, and we expect to have a second draft available for circulation and review by the CBFWA members, Council staff and other participants in the process by the end of December. We also want to incorporate consultations with the Independent Scientific Advisory Board, the Public Power Council, NPPC, the Columbia River Alliance and others who have been interested in this process during January, to be sure that our finished product meets their expectations. The plan is to complete this version of the Multi-Year Implementation Plan by late January.

There are no huge surprises in the issues that have been identified to date, Sheets continued; as expected, there are some conflicts between upriver and downriver uses of water, IRCs and flows for salmon. Again, our goal is to clearly elucidate those issues, what has been tried before and when these issues need to be resolved. Another big issue that may be coming the EC's way is the schedule for system configuration, he said. The draft MYIP will include at least two system configuration alternatives. The first is the alternative put together by the System Configuration Team; the second was developed by CRITFC and the Sho-Ban Tribes. The primary difference between the two is the fact that CRITFC and the Sho-Bans are advocating a much lower level of investment in improvements at the Lower Snake projects.

Could you describe the interaction between the MYIP development process and the ISAB? asked Stelle. At this point, what we had in mind was a very informal interaction, Sheets replied -- a partial day workshop at which the fish and wildlife managers will lay out their current thinking and what's in the draft implementation plan. The fish

and wildlife managers would like to use the work that's been done so far as the basis for a framework or conceptual foundation that can be used to further integrate all of this work.

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## **EXECUTIVE COMMITTEE MEETING**

**(DAY 2)**

**DECEMBER 11, 1996, 9 a.m. - 3:30 p.m.**

**NORTHWEST POWER PLANNING COUNCIL OFFICES**

**PORTLAND, OREGON**

### **VI . Review of 1996 Operations and Biological Implications.**

Cindy Henriksen of COE led off with a discussion of the hydrologic data from the 1996 operational year: runoff, flow and spill volumes, storage reservoir elevations and total dissolved gas monitoring results (see Enclosure E for detailed data). Among the highlights:

- 1996 was an above-normal water year. January-July and April-August runoff volumes at Libby, Grand Coulee, Lower Granite and The Dalles Dams averaged between 118% and 143% of normal.
- The Lower Granite spring seasonal (April 10-June 20) Bi-Op flow objective was 100 Kcfs; the observed seasonal flow at that project averaged 136 Kcfs in 1996. The summer season (June 21-Aug. 31) flow objective at Lower Granite was 53.5 Kcfs; an average of 50 Kcfs was actually provided.
- The McNary spring seasonal (April 20-June 30) Bi-Op flow objective was 260 Kcfs; actual observed flow at the project was 356 Kcfs on a seasonal average. Summer (July 1- Aug. 31) flows also exceeded the Biological Opinion target at McNary; the target was 200 Kcfs, while actual observed flows averaged 212 Kcfs.

Henriksen described the details of the Libby-Arrow swap; beginning August 13, Libby outflow was reduced from 24 Kcfs to 14 Kcfs, while outflow from Arrow was increased by 10 Kcfs. This resulted in an equivalent volume of water being provided for salmon flows downstream during the remainder of the month of August; the positive, from Montana's perspective, was that Libby finished the summer at elevation 2452 feet, rather than the 2439-foot elevation shown in the Biological Opinion, Henriksen said.

What was the financial impact of that swap? asked Stelle. This year, it was essentially a wash, thanks to the Canadians' willingness to be flexible in their scheduling, replied BPA's Bob Lohn. I raise that question because the ability to procure these sorts of agreements can provide some relief for the Upper Columbia storage projects, while at the same time providing the salmon flows called for in the Bi-Op, said Stelle. It's an important option. Obviously our ability to do these kinds of swaps depends on what type of water year we're having, said Lohn; it also depends on the current state of our relationship with Canada.

Henriksen went on to detail 1996 operations at Hungry Horse and Grand Coulee Reservoirs. Moving on to total dissolved gas, she began with a report on Ice Harbor Dam, at the downstream end of the Lower Snake system. As you can see from the daily maximum and minimum TDG readings in the Ice Harbor forebay, our waiver limit was 115%; consistently, we were near or slightly above 120% from May to early July. In response to a question, Henriksen said repairs had limited Ice Harbor to four available turbine units for much of the spring season; all five turbine units at that project are scheduled to be back on line by the beginning of the 1997 migration season.

For Ice Harbor tailwater, the TDG waiver limit was 120% in 1996, Henriksen continued; as you can see, from early April through July 1, TDG below that project averaged about 140%, primarily due to uncontrolled spill. After July 1, we were able to meet the 120% waiver limit below that project, she said. Bear in mind that this is a worst-case

scenario; Ice Harbor has consistently been a TDG hot spot in the Lower Snake.

Moving on to data from John Day Dam in the Lower Columbia River, Henriksen said that, again, the forebay TDG waiver limit was 115%; we were able to meet that limit for much of April and May, but by June, flows at John Day reached the 400 Kcfs-450 Kcfs range, and TDG increased correspondingly, exceeding 125% for a short period in mid-June. It wasn't until late July that the flow recession allowed us to meet the 115% waiver limit once again, she said.

In John Day tailrace, the waiver limit was 120% in 1996; as you can see from the data, said Henriksen, we were well above that for much of the migration season, consistently in the 135%- 140% range from early April through mid-June. After the flow recession in mid-June we were able to meet the waiver standard once again.

In response to a question, Henriksen said the Technical Management Team had set up a spill priority list in 1996, in an effort to spread spill around the system, concentrating it to the greatest extent possible at projects outside the migration corridor. Does the TMT have the ability to identify spill and TDG hot spots within the system, and to manage the spill program to mitigate, as much as possible, the impacts of TDG on both juvenile and adult migrants? asked Stelle. Are you getting in-season information on TDG-related mortalities? What we tried to do was manage the system such that TDG percentages were spread as equally as possible throughout the system, Henriksen replied.

It would be useful if the Corps could develop a list of anticipated turbine outages for the coming migration season, said Stelle. We intend to do that as part of the TMT's pre-season planning process, replied Col. Bart Bohn of the Corps. To answer your question about TDG-related mortality information, he continued, the TMT receives regular updates on physical and biological conditions in the system at its weekly meetings, and generally has the ability to make adjustments in response to those data.

Next up was Michele DeHart of the Fish Passage Center, who summarized the smolt monitoring data from 1996. I'd like to emphasize that everything I'm going to say is based on what Cindy just told you about flow, spill and the shape of the runoff, DeHart began. As most of you are aware, she said, the Fish Passage Center is assigned to oversee the conduct of the Smolt Monitoring Program; one of our tasks is to build a consistent, long-term database on migration characteristics; that's what I'll be presenting to you today. I'd also like to emphasize that the data I'll be presenting today is preliminary; it's simply observations based on the raw data, and does not include analysis incorporating environmental factors. We'll have a more polished data set in the Fish Passage Center's final annual report, due out by early spring.

DeHart put up a series of overheads covering such topics as 1996 fish passage efficiencies at the various FCRPS projects, the number of fish transported from the collector projects in 1996 and the percentage of in-river migrants showing signs of gas bubble trauma in 1996; these are captured in Enclosure F. Among the highlights of her report:

- The 80% goal for fish passage efficiency called for in the Bi-Op was met only at Ice Harbor, McNary and John Day Dams in 1996.
- In terms of the percentage of fish showing signs of GBT, in 1996, compared to 1995, flows were higher, gas levels were higher, spill levels were higher, and the percentage of fish with signs of GBT was higher. Observations of GBT symptoms tracked closely with the gas levels reported by the Corps of Engineers in 1996.
- In 1996, the smolt monitoring program examined a total of 43,834 fish between April and August. Of that total, 1,962, or 4.5%, showed some form of GBT symptoms. The vast majority (1,543 of the 1,962) showed minor signs; despite high levels of flow, spill and gas in 1996, the number of fish showing severe GBT signs was surprisingly low -- a total of 81 out of the 1,962. We certainly never reached a level of GBT observations which suggested that additional gas abatement measures were needed, DeHart said.
- Pre-season training and the QA/QC component of the Smolt Monitoring Program were vastly improved in 1996; we had a lot more confidence this year that when signs of TDG exposure (bubbles) were exhibited, the present monitoring program was able to observe the signs, DeHart said.

- One issue we addressed last year was gill bubble monitoring, said DeHart. BPA contracted for an independent consultant to look at gill bubbles at both Bonneville and McNary Dams; the contractor found very few fish that had any bubbles at all, and most of the bubbles he observed were not gas bubbles, but lipids.
- Another question that arose last year was whether or not the smolt monitoring program's sampling at the dams was providing an accurate picture of what was actually happening to fish in the reservoirs. During the summer of 1996, CRITFC was able to sample fish in the reservoirs and look for signs of GBT concurrently with the smolt monitoring program at the dams. The occurrence of symptoms in both sampling programs matched closely.
- Water temperatures overall were lower than average in 1996, with the exception of a two- week period at Lower Granite in mid- to late July.
- In conclusion, said DeHart, based on 1995 and 1996 data, the 115%/120% TDG spill program called for in the Biological Opinion is not likely to detrimentally impact migrating juvenile salmonids.

Partly in response to Stelle's earlier question about the TMT's ability to adjust system operations in response to increased incidence of gas bubble trauma, DeHart said the driving force behind system management in 1996 was the physical data -- we tried to meet the gas waiver standards, she said. However, the NMFS monitoring program specifies that if 15% of the fish exhibit signs of GBT in 5% or more of unpaired fins, or if 5% of the fish show severe signs (>25% of unpaired fins), the system managers are required to consider actions to reduce gas in the system.

Moving on to data on migration timing and duration at McNary and John Day Dams, DeHart said

spring passage of steelhead and chinook was 1-2 weeks earlier at the Lower Columbia projects compared to the 1995 migration. Subyearling chinook passage at John Day was protracted, lasting an additional 17-26 days compared to 1995. Between 87% and 90% of PIT-tagged hatchery subyearling chinook released between June 6 and July 10 in the Snake and Clearwater Rivers and detected at McNary Dam were detected there in August; half of those fish were detected in the last half of August, which means that subyearling migrants are present in large numbers right up through the end of August and beyond. The pattern for wild migrants was similar.

We don't dispute that the fish are there in August, said Mike Field -- the real question is how much flow is needed to accomplish their migration. Based on historic flow/travel time data, our expectation is that if you provide more flow for these fish, they will move faster, DeHart replied. And I have to take exception to Mike's point, said Darm -- the question isn't exactly how much flow is needed for these fish to successfully accomplish their migration. The question is, do you get some benefit from additional flows. And until we get the PIT-tag information on returning adult fall chinook, we won't have the answer to that question, said Field. However, everything we've seen to date indicates that these fish are responding to increased flows, DeHart observed.

The passage index at Lower Granite was 35%-75% lower than the past three years, DeHart continued. As most of you know, she said, the passage index is simply an indicator of fish passing the project -- it's not a population estimate. All this gives us is a trend, an indication of the timing and magnitude of the run. The wild chinook index was lower than we've ever seen; this isn't unexpected, because brood year production was also lower. For hatchery fish, when we looked at hatchery releases upstream vs. the passage index at Lower Granite, we found that that was a higher proportion, which is an indication that we were keeping more of the hatchery production alive down to Lower Granite in 1996 compared to previous years, she continued.

The most interesting project in terms of passage was Rock Island, said DeHart. Bear in mind that the passage index at this project is developed at an unscreened powerhouse, so efficiency there is very low. The passage index at Rock Island showed a fourfold increase for hatchery fish over 1995. That either means a greater percentage of the hatchery production made it to Rock Island this year, or that the efficiency of collection at that project changed. McNary passage indices were lower for all species than they've been in the past three years; bear in mind however, that we had tremendously high levels of spill at that project throughout the migration season, and fish passing over the spillway don't show up in the collection efficiency estimate.

In general, said DeHart, our conclusion this year was the same as it was in 1995: higher flows are producing higher passage indices, faster travel times and a longer duration of passage.

Next up was Steve Smith of NMFS, who presented information on the relationships between the survival of juvenile migrants and environmental variables. Smith distributed Enclosure G (a series of charts and graphs showing estimated reach survivals for juvenile chinook salmon, flow vs. survival, spill percentages during the migration season, etc) and provided extensive PIT-tag information about the survival of juvenile migrants through the system in 1996, primarily from the tailrace of Lower Granite Dam to the tailrace of Lower Monumental Dam (see Enclosure G for more detailed information).

This is powerful information, Stelle observed, highly relevant to the question of where we're losing fish in the Snake system. That's correct, said Smith. Our intention has been to conduct a longterm, multi-year study, looking at relationships between survival estimates and environmental exposures both across years and within years. He explained some of the methodology used in the study, then said the survival estimates are based on the detections of PIT-tagged fish as they move downstream. We then define the exposure to environmental variables for each release group, Smith said. The bottom line is that this is a fairly complicated analysis that requires a lot of steps, both to calculate exposures and to calculate survivals. A total of about 93,000 fish were PIT- tagged for this study in 1996; in 1995, 160,000 were PIT-tagged.

Smith put up a series of overheads; the first charted the estimated survival of yearling chinook, released in Lower Granite tailrace, to various projects downstream in 1994, 1995 and 1996. In 1996, survivals from Lower Granite to Lower Monumental were estimated at about 85%; survival in this reach was higher in 1996 -- the year of highest flow -- than it was in 1995 or 1994. Estimated survival for this reach was lowest in 1994, the year of lowest flow.

From Lower Granite to McNary, survival was estimated at about 60% in 1996, a lower percentage for this reach than was seen in 1995. We think that's probably because of the high levels of spill and TDG in this reach, particularly below Ice Harbor, Smith said. 1996 survival from Lower Granite to John Day was also estimated at about 60%.

In response to a question, Smith said per-project mortality for yearling chinook is estimated at about 10%. Moving on to within-year survival estimates for individual release groups from Lower Granite to Lower Monumental (p. 2 of Enclosure G), Smith noted that there is not a lot of variability among these survival estimates -- groups released in April fared only marginally better than groups released in May. Moving on, Smith presented data on flow exposure for individual release groups; on Lower Granite-to-Lower Monumental travel time vs. flow at Lower Monumental, on survival from Lower Granite to Lower Monumental vs. flow at Lower Monumental; on spill exposure and on survival from Lower Granite to Lower Monumental vs. daily spill percentage. He provided similar information for the Lower Granite-McNary reach, then went on to discuss survival from Lower Granite to McNary vs. daily TDG levels at Ice Harbor.

Obviously, gas levels throughout this past season were high or very high for fairly sustained periods of time, said Stelle. Are you picking up, in your data, any direct correlations between gas levels and survivals? I guess what I'm getting at is, in your view, are we using the right criteria to manage gas to maximize survival?

I would say that, at gas levels up to the TDG waiver levels, we certainly don't see any decrease in survival, Smith said. All of the exposures greater than the waiver levels have been caused by uncontrolled spill, and there isn't much you can do to manage uncontrolled spill. Have you noticed a decrease in survival at any particular level of flow? asked Stelle. There appeared to be that type of correlation in 1995, Smith replied. However, in 1996, survivals really didn't track very well with gas levels -- they were high early in the season, when dissolved gas levels were also high, and lower later in the season, when gas levels were also high. We only have two years of data, and I would have to say that the data so far is inconclusive.

Smith then provided the following conclusions:

- In upper reaches (LGR-LMO), composite yearly survival is higher in years with higher flows.
- Within-year travel time correlates strongly with flow, but

- Within-year survival correlates weakly with flow and spill. This doesn't necessarily mean that there is no relationship, Smith added -- it means that, with the methods we're using, we did not find a correlation.
- To McNary Dam, yearly survival was lower under higher flows.
- High TDG levels (>135%) may decrease survival.

In terms of your observation that, to McNary Dam, yearly survival was lower under higher flows, said Stelle, your suggestion, although you don't have the data to isolate it, is that high gas levels at Ice Harbor are the cause? Right, Smith replied. You would expect to see the same relationship between flow and survival all the way down through the system, unless there is something related to higher flows in a particular reach that is detrimental to survival.

Smith touched briefly on survival results from release to Lower Granite Dam for PIT-tagged subyearling hatchery fall chinook. These fish were released a long way from the free-flowing Snake River, at a place called Pittsburg Landing, Smith said; we can compare survivals between 1995 and 1996 for two of our release dates. In 1995, we estimated survival for the group released on June 6 at about 65%; in 1996, about 55% of the group released on June 6 was estimated to have survived to Lower Granite. He added that it takes 30-50 days for these fish to arrive at Lower Granite. About 60% of the fish released on June 13, 1995 survived to Lower Granite; for the June 13, 1996 release group, the percentage was slightly lower. Overall, estimated survival was slightly higher in 1995 than in 1996, but the confidence intervals do overlap, and the difference isn't really statistically significant.

What this data suggests is that we're losing 40%-60% of our fall chinook through this first reach -- isn't that a lot? asked Stelle. Well, it's related to the information Michelle provided, and 1995 and 1996 actually showed up as pretty good years compared to wild chinook data for the past six years, Smith replied. I would agree that this is pretty high mortality for a single reach; however, there's quite a learning curve when these fish are first introduced to the river -- there's a lot of milling around before they head downstream. Once they pass Lower Granite, subyearling fall chinook survival appears to be higher -- on the order of 80% per project in 1995, Smith said. However, that's still a loss of 20%-25% per project.

Smith moved on to fall chinook survival data from release at Pittsburg Landing to Lower Monumental Dam; as you can see, he said, 1996 survivals were slightly lower for each release group than they were in 1995; we saw an additional 30%-40% loss between Lower Granite and Lower Monumental. He provided a few further conclusions:

- One weakness of this study is the fact that it is a very complicated analysis; definitions of exposures are problematic.
- In the context of the long-term study, the increased PIT-tag detection capabilities at John Day and Bonneville Dams will greatly improve the study's data-gathering capabilities.
- The study results are relevant to mortality that occurs during the migration, and says nothing about adult returns.

Next up was Bob Hallock of the U.S. Fish and Wildlife Service, who presented information on last year's operations for sturgeon in the Kootenai River. He provided some background information on the current population, range and spawning habits of the Kootenai River white sturgeon, explaining that the reason these fish were listed is the fact that it has been 21 years since there was significant recruitment; we have documented only 16 fish younger than 21 years, and the average age of this population is over 30 years, he said.

Hallock provided details on the two artificial flow "pulses" provided in aid of sturgeon spawning from Libby Reservoir during the summer of 1996 (see Enclosure H for details). The strategy behind these pulses was to encourage the sturgeon spawners to move farther upstream, where the spawning substrate is better, explained Hallock; in 1996, radio-tracking indicated that the fish did respond to the higher flows. However, we have yet to find young-of-the-year fish this year.

In response to a question, Bohn said Congress has approved funding to add turbines at Libby Dam, which is currently the major bottleneck for sturgeon flows -- powerhouse capacity at that project is limited to 26 Kcfs, and

even low levels of spill produce unacceptably high levels of dissolved gas. However, funding has not yet been appropriated for that project. If funding is approved, the new turbines are expected to increase powerhouse capacity at Libby by 60%. It was observed that the new turbines would not pay for themselves through power sales; there is also strong local opposition from local recreational users to increased flows from Libby, which makes the Congressional appropriations process more problematic.

Nigro suggested that, once the analysis of the data from the 1996 migration season has been completed, a follow-up presentation to the EC would be very useful. Stelle agreed; I would hope that we can schedule such a briefing before we tackle the policy issues at the next EC meeting, he said. It might also be helpful to schedule separate briefings for administration people and for the legislative branch on the status of the implementation effort in January.

## **VII. Report on Independent Economic Analysis Board (IEAB).**

Ken Casavant, Chairman of the Northwest Power Planning Council, led off his report on this group's activities by emphasizing that the IEAB is an evolving animal. The mission of the IEAB is to provide economic information to the Power Planning Council, to be combined with the scientific information generated by the Independent Scientific Advisory Board and others, with the goal of allowing the region to make better-informed policy decisions, he said.

There has been a lot of interest in this new group, Casavant continued -- so far, we have received 76 membership nominations, 72 of which are still active and 56 of which have now been processed. Of that total, 26 come from Washington, 25 from Oregon, eight from Idaho, six from Montana, three from California, two from Washington D.C., two from Canada and one each from Kentucky, Connecticut, Maryland and Virginia. The nominations are being reviewed by Tom Truelove, a past member of the Power Council, Gus Nattersdorf (?) from Lewis and Clark College, and myself, Casavant said. We will bring these names to the Council, together with a set of criteria to allow selections to be made from the list of proposed nominees.

Moving on to anticipated IEAB functions, Casavant said three roles are currently under discussion:

- To respond to questions from the Council about the economic impacts of alternative measures. The board could either do the analysis itself, or evaluate the analyses being done by other entities in the region. Based on the discussions we've had so far, this is the most likely function of the IEAB, Casavant said.
- The second possibility has to do with a major study of the anticipated economic impacts of drawdown. The Corps and NMFS are already looking at those impacts; we don't know yet what the role of the IEAB would be in that effort, said Casavant, but it could either serve as a technical review panel during that process, or as an evaluator of the final results. Personally, I would prefer to see the IEAB in a more active role throughout the development of that analysis, rather than as an evaluator once the analysis is completed, Casavant said.
- The third possible role has to do with the Council's charge to review the cost-effectiveness of the region's fish and wildlife projects under the Gorton Amendment, Casavant said. We may wind up using the IEAB, first, to determine exactly what the language in the amendment, which says we should do cost-effectiveness analysis, means. Second, we could ask the economists help us determine what the nature of the review procedure might be. Finally, if necessary, the IEAB may do the actual economic analysis under the Gorton Amendment.

Those are the three main choices we have in front of us, said Casavant. The goal is for the group to be truly independent and impartial -- if we can achieve that, I think the region will benefit. A staff person, either from the Council or a contractor, will be assigned to this project, with responsibilities similar to those of Chip McConaha with the ISAB; this coordinator will receive questions and, with Council guidance, decide how to focus each question for analysis. He added that if anyone has suggested criteria to assist in choosing the IEAB members, they should submit them to him.

In general, I agree that, if the mechanism is well-defined, this could be a very useful tool for the region, said Stelle. One thought is that, as the region enters a period of heavy sledding, it would be useful to us to be able to help shape

some of the major queries to the IEAB. I hope we can keep the conduit open, in other words, Stelle said.

In response to a question, Casavant said the membership of the IEAB will initially consist of six to eight individuals; there will be room to add one or two other members as holes in the expertise of the membership become apparent.

A friend who is a PhD. economist once told me that all economists are into voodoo, said Howard Funke of the Spokane/Coeur d'Alene Tribes -- with all the politics going on in this basin, how are we going to make sure these guys give us decent information? What access will we have to the development process for this body to give us some assurance of the fairness of their eventual work products? The proof is going to have to be in the pudding, replied Casavant -- it will be up to the region to decide whether the group is actually providing independent analysis.

Well, to make a cynical observation, ever since the dams came on-line in the Columbia Basin, fish and wildlife have always been severely undervalued in economic analyses, said Funke. The other revenue-generating activities always seem to get an unfairly-enhanced value vis-a-vis fish and wildlife, and it would be nice if you could assemble a group that can fairly analyze the intrinsic value of the fish and wildlife resource to the ecosystem and the region. And there are analytical tools that allow you to do that, said Casavant -- we're going to try.

Will the board be dealing with the power side of the equation as well? asked Stelle. Because there are huge, huge issues on the power side that are complete flybys, and shouldn't be. I would expect that we will, Casavant replied.

I won't be here this afternoon, said Lionel Boyer, but I just wanted to say that everything I've heard, both yesterday and today, only justifies the Shoshone-Bannock Tribes' position that we need to do away with the four Lower Snake River Dams -- that will solve many of the problems we've been discussing.

#### **VIII. Furse/Crapo Letter.**

As we mentioned during yesterday's session, said Stelle, we have now received the Furse/Crapo letter; all of you should now have a copy (a copy of the letter is attached as Enclosure C). It's a good, detailed letter, focused on this forum and our efforts to implement hydrosystem improvements. Representatives Furse and Crapo requested that we take this letter up at this meeting; I think for purposes of today's discussion, if you have observations or comments on the letter, this would probably be the time and place to make them. Certainly I would like to provide a prompt and appropriate response to this letter, Stelle said.

I agree that it's a good, constructive letter, said Mike Field; I do want to observe, however, that items 6 and 7 are going to be very difficult to accomplish -- those are institutional items, subject to the Congressional appropriations process. The Corps and SCT are working hard on all that stuff; it's not going as fast as any of us would like, but there are a lot of institutional hurdles to overcome.

Can you give us a deadline for comments on the letter? asked Tony Nigro. I would ask that anyone with comments should get them to Col. Bohn or myself by close of business on December 18, said Stelle -- I've already begun to draft a NMFS response, which I hope to finish tomorrow.

#### **IX. Recommendations from the Implementation Team Regarding EC's Role in Implementation of the Memorandum of Agreement.**

An informal group has been meeting to talk about the implementation of the Bonneville MOA, said Darm. In that group, what we've tried to do first is look at what existing mechanisms are in place in the region for allocating and prioritizing the Bonneville dollars within their budget categories. One of the categories that jumps out at us as one that is already being dealt with by an existing structure is the Corps' capital improvement program, which is being addressed by the System Configuration Team.

The Implementation Team thinks that it makes sense for the SCT to continue to be the place where those capital improvement discussions take place, Darm continued. The IT also agreed that it makes sense for the SCT to look at one piece of the Bonneville budget reimbursibles category: namely, the amount the Corps spends each year on fish passage O&M, which Bonneville is required to repay to the Treasury. This is not a prioritization activity; Darm



explained; it's primarily a budgetary exercise, looking at how much the Corps plans to spend on this item during the coming fiscal year.

The IT wanted me to ask the Executive Committee to endorse that role for the System Configuration Team, said Darm, so that we can tell the MOA implementation group that the EC/IT/SCT structure is willing to take on that task. The intent is to cover the SCT's activities, as well as the Corps' reimbursable activities related to fish passage? asked one meeting participant. That's correct, Darm replied.

There is some concern among the anadromous fish managers that the Council should be involved in the budgetary side of the SCT, said Field. It might be wise to send the SCT's recommendations through the Council to be approved. The issue that came up in the anadromous fish managers' meeting was the question of the Gorton Amendment, and whether it applies only to the direct fish and wildlife program budget, said Darm. As far as the question about how the Council wants to provide input to the Corps' prioritization process, I guess that's open to discussion.

Just to be clear, said Stelle, the MOA establishes an obligation, on our collective part, to solicit review and comment on the construction of various components of the budget. My understanding was that, at least for the capital budget component, the primary place where that vetting occurs is in the SCT, as overseen by the Implementation Team, he said. We agreed that, wherever possible, we would use existing fora for this type of discussion; the MOA's intent was not to reinvent the wheel, said Funke. However, the MOA also says that we will develop new fora, and expand existing fora, when there is opportunity to improve efficiency and coordination.

What I want to be sure we don't do is adopt the status quo, and end up with what we had before, because what we had before didn't work, Funke continued. We need to be sure that all the stakeholders are at the table, making those decisions, rather than allowing an exclusive little group to make them. That's what the MOA and the annex are designed to preclude. Increased coordination, communication and decisionmaking inclusivity are the keys to the success of the MOA and annex processes.

So you're talking about having the Council be the vehicle for public review of the SCT's priority list? asked Tony Nigro. That's correct, said Field. There are a couple of different facets to this issue, observed Stelle. One facet is, does it make sense to use the very efficient public comment process the Council has in place for the purposes of formally soliciting public comment on the SCT rankings? That's a good question, and my feeling is, the people who know the details should take a look at that, to see whether the mechanics of the Council process will work with the SCT's schedule. Another facet is the fact that the SCT is encouraged to reach consensus wherever possible, said Stelle -- they then take those agreements to the Implementation Team. The SCT also takes issues where consensus cannot be reached to the IT for discussion -- in other words, the IT is the place where a lot of this stuff gets sorted out. If the IT cannot reach agreement on a given matter, they bring it here for resolution. If we can't agree, then the decisionmaking authority resides with whatever agency has jurisdiction over the project or process in question.

My point is that this is the forum we have constructed specifically to try to get to Howard's point about decisionmaking inclusivity, and that goes directly to the relationship between the Executive Committee and the Power Planning Council, Stelle continued. My understanding was that we had specifically stated that there should be a seat at the EC for a representative of the Power Planning Council, to speak to and promote matters of consistency between the Council's Fish and Wildlife Program and the actions of this body in implementing the various fish and wildlife programs in the basin, he added.

We've written you a letter, asking for clarification of the Council's role in interactions with the Executive Committee, said Casavant. We're still waiting for a response on some of the very things we're talking about today.

My concern is that this process not become too bifurcated, said Stelle. The reason the IT is recommending that we use the SCT for this process is that all of these issues are already being vetted in that forum on a realtime basis, and it doesn't make sense to create another group that will do the same thing.

One concern I have is the amount of time the Council's public comment mechanism might add to the SCT prioritization process, said Ken Pedde -- the timeline is pretty tight as it is. I'm not denying that the Council's process is an excellent one, he said, but another question is, what happens to the comments once the Council receives them?

I would suggest that the Council give them back to the SCT for incorporation, said Field. Then, if conflicts arise, those can be dealt with at the IT or EC level.

The discussion continued in this vein for some minutes, yielding other questions associated with the public review process:

- Is there adequate review to ensure that the CBFWA fish and wildlife ranking process is consistent with other capital project activities?
- Should the Council be asked to approve the SCT's budgetary prioritizations, in addition to soliciting public comment on them?

The tribes are at least informally on board with the idea of incorporating the Council's public comment process in any regional forum governance process, said Funke. One philosophical observation, he said -- the systems we have historically had in place in the basin haven't worked very well. There are many people in the region who don't want to see the Council acquire additional power or authority, because they view the Council as a body that caters to industry, not to fish and wildlife. There has never been a proper balance between fish and power in the basin -- it's a credibility problem, Funke said. We've spent a lot of time over the past two days talking about inclusivity, but the fact is, everyone here is still fighting for their turf, for decisionmaking authority. What the tribes want to achieve is fair play on fish and wildlife issues over the long term, and I guess what I'm trying to say is that both the Power Planning Council and the federal agencies have a ways to go to gain that level of credibility. Until you truly give fair access and equal weight to the concerns of all the stakeholders, and give more weight to fish and wildlife concerns, you're going to have problems, Funke said.

Let me summarize the proposal the Executive Committee is being asked to decide, said Silverberg: that the Executive Committee/System Configuration Team structure be used to review and prioritize the Corps' budget for capital improvements and the reimbursible portion of O&M on mainstem passage facilities; added to that is a request that the IT work with Council and Authority staff and the MOA implementation group to discuss using the Council's public involvement process to provide input on the SCT rankings. Does anyone object to this going forward as an action item? asked Silverberg. [NOTE: one meeting participant suggested an attachment to the action item, which was inaudible on the tape]. After a few minutes of further discussion, no EC objections were raised to this action item.

#### **X. Summary of EC Assignments to IT, Next Meeting Date and Agenda Items.**

Yesterday the EC heard a presentation on the dispute resolution report prepared by Suzanne Orenstein, and on the discussion held by attorneys representing the various sovereigns in the region on December 9, 1996, said Silverberg. The attorneys' group discussed the following options for dispute resolution as it relates to the regional forum:

- 1) That the sovereigns jointly discuss and endorse broad dispute resolution principals which can be applied across forums;
- 2) That the regional forum procedures be improved to enhance inclusivity and the capacity of the group to resolve hydro-related issues, or
- 3) That the dispute resolution effort and design be focused on a specific issue or issues, not a broad forum.

After discussion of the issues related to dispute resolution, the Executive Committee agreed to authorize the Implementation Team to:

- participate with the attorneys' group to improve the rules and procedures of the regional forum to increase participation and effectiveness
- to develop acceptable dispute resolution procedures to enhance the capacity of the regional forum to avoid and resolve hydro disputes as they arise

- to identify a specific issue or issues which can be put through a dispute resolution process
- to encourage tribal participation through active outreach involving CBFWA and others
- to develop an interim report addressing these issues by the end of February 1997.

Orenstein also provided a list of possible issues for the trial dispute resolution process, identified at yesterday's session. This list is only a beginning point, she said; the actual process would be agreed upon by all parties necessary to reach a satisfactory and implementable agreement on the issues; any dispute resolution process will be mindful of all rights and responsibilities of the parties, including existing laws and treaties. Possible trial ADR issues include:

- Transportation
- Spill levels during the summer months
- Decision matrix
- John Day
- Gas standards
- Implementation of the 1995 Biological Opinion
- The future of the Lower Snake River dams
- Recovery of salmon stocks

The next Executive Committee meeting was scheduled for Tuesday, February 25 from 10 a.m. to 5 p.m. and Wednesday, February 26 from 9 a.m. to 3 p.m. in Spokane, Washington. The group identified the following possible agenda items for the February meeting:

- a presentation on the 1997 water management plan
- a report from the IT and attorneys' group on the rules and procedures and dispute resolution development process.
- a further report on the 1996 migration season, incorporating additional analysis of the raw data.

With that, the meeting was adjourned. Meeting notes prepared by Jeff Kuechle, BPA contractor.